IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. R.S.SYAL, VICE PRESIDENT AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.394(Asr)/2017
Assessment Year:2012-13

Income Tax Officer Ward3(1), Srinagar	Vs.	Shri Fayaz Ahmad Bhat Prop. M/s G.M. Steel H.S.H. Street, Srinagar PAN:BBFPB198B
(Appellant)		**(Respondent)**

Appellant by: Sh. S.S. Negi (DR)
Respondent by: None

Date of hearing: 19.02.2018
Date of pronouncement: 21.02.2018

ORDER

PER N.K.CHOUDHRY. JM:

The instant appeal has been preferred by the Revenue Department, on feeling aggrieved against the order dated 02.02.2017 passed by the Ld. CIT(A), J&K, Jammu, in appeal No.199/15-16, by raising the following grounds of appeal.

> *"Whether the Ld. CIT(A) was right in law and fact in allowing the appeal of the assessee by holding that the AO has accepted the net profit rate of 0.66% in the A.Y.2013-14 & 2014-15 and accordingly the same should be adhered to in the A.Y.2012-13 also.*
>
> *Whether the Ld. CIT(A) was right in law and fact in accepting the plea of the assessee without appreciating the fact that the current year is a different year and has deleted the addition made without considering the failure of the assessee to substantiate the trading results declared for the year under consideration. "*

2. The brief facts of the case are that the assessee was working as an individual under the name and style of M/s. G.M. Steel, dealing in wholesale business of G.C. Sheets, Fiber Glass, Barbed Wires and color coated sheets, having its principal place/head office situated at Hari Singh High Street, Srinagar, Kashmir. The assessee has filed its return of income along with audited accounts and has declared sales at Rs.11,54,56,867/- and gross profit of Rs.21,92,989/- giving a G.P. rate of 1.90%, against the said receipts, the assessee has debited various expenses under different heads and has declared a net profit of Rs.7,66,425/- attributing a net profit rate of 0.66%. During the assessment proceedings, the AO noticed that the assessee has not maintained substantial verifiable documentary evidence in respect of the expenditure claimed under the heads purchases at Rs.12,71,49,789/- and 'freight' of Rs.44,97,202/- and various other expenses debited in the P & L a/c. The assessee also failed to furnish inventory of the closing stock as on 31/03/2012 and also failed to furnish complete details of liability shown on account of 'sundry creditors'. When the AO asked the assessee to substantiate the purchases, the freight, the various expenses and the other liabilities, the assessee submitted that these are not available as the business premises/office of the assessee drowned during the devastating floods of September, 2014 and books of account and subsidiary records either got destroyed or badly damaged. The assessee pleaded that since the books of accounts of the assessee are duly audited the same should be accepted as evidence.

The AO however, was not convinced with the replies of the assessee and concluded that book version/result declared by the assessee is not correct and complete as such the same deserves to be rejected u/s. 145(3) of the Income tax Act, 1961. The AO also drawn the attention of the assessee to the decision in the case of Action Electricals Vs. CIT [2002] 258

ITR 188 (Delhi) where the action of the AO u/s. 145(3) of the Income tax Act was justified, when the AO was not satisfied about the correctness or completeness of the accounts of the assessee.

In response to that the assessee stated that each and every item of expenditure claimed in the profit and loss and in the balance sheet are correct, though, he expressed its inability to produce the subsidiary records which got washed away in the flood of September, 2014, however not satisfied with the explanation of the assessee, the AO rejected the book results u/s 145(3) of the act and applied a net profit rate of 3.5% on the gross turnover of Rs.11,54,867/- which comes to Rs.44,40,990/- and added this amount to the total income of the assessee.

3. Feeling aggrieved against the order passed by the Ld. CIT(A), the Revenue Department preferred the instant appeal and in support of its case submitted that the Ld. CIT(A) was not right in law and fact in allowing the appeal of the assessee by holding that AO had accepted the net profit rate of 0.66% in the Asst. Year; 2013-14 and 2014-15 and accordingly the same should be adhered to in the Asst. Year.2012-13 also. Further, it was also argued that the Ld. CIT(A) has committed the error in law and fact, in accepting the plea of the assessee without appreciating the fact that the current year is a different year and has deleted the addition made without considering the failure of the assessee to substantiate the trading results declared for the year under consideration.

4. We have given our thoughtful consideration to the order passed by the Ld. CIT(A). The Ld. CIT(A) taken into consideration the facts that the appellant has maintained all the necessary accounts like cash book, ledger and other subsidiary records along with bills and vouchers and the accounts

of the assessee were also audited, however, the subsidiary records and the bills and vouchers were destroyed in September, 2014 floods and that is why failed to bring either in the assessment or appellate proceedings. The CIT(A) has also taken into consideration that net profit rate applied @ 3.5% and gross turn over was too high considering the business of the assessee, whose sales stood at very low and G.P. rate and N.P. rate has been increased in comparison to the last year and the A.O has also accepted the net profit rate of 0.94% in the Asst. Year 2013-14 and 2014-15, thus, net profit rate declared by the appellant in the return of income should be accepted. The Ld. CIT(A) found no reason for the A.O to estimate the net profit rate at 3.5% on the gross turn over without having any evidence that it has earned more profit in comparison to the earlier year or subsequent year.

We do not find any infirmity, illegality and impropriety in the order passed by the CIT(A) because while accepting the N.P rate as declared by the appellant in the return of income, the Ld. CIT(A) considered the accepted net profit rate during the A.Y. 2013-14 and 2014-15 by the A.O while passing the order u/s 143(3) of the I.T. Act. Hence the order made challenge does not require any interference.

5. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open Court on 21 .02.2018.

Sd/-	Sd/-
(R.S.SYAL)	(N.K.CHOUDHRY)
VICE PRESIDENT	JUDICIAL MEMBER

Dated: 21.02.2018
/PK/ Ps.

Copy of the order forwarded to:

(1) Sh. Fayaz Ahmad Bhat, Srinagar
(2) The ITO, Ward,3(1), Srinagar
(3) The CIT(A) J&K, Jammu
(4) The CIT concerned
(5) The SR DR, I.T.A.T., Amritsar

True copy

By order